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Senate Appropriations Committee

Re: Comments on Amendments to MIDC Act- HB 5985

Dear Senate Appropriations Committee:

Set forth below are Oakland County's comments on HB 5985.

Indigency, Partial Indigency and the Determination of Same

Section 3(K) (page 4)

Section 7(3)(8) (pages 14-16)

Section 11 (3) (D) (E) (page 16)

There are three distinct problems that are present here. First, the lack of definitions and standards for indigency and partial indigency; second, the entity (judicial or indigent defense system) which will make the determination of indigency and partial indigency; and third, if the indigent defense system will make these decisions, there is a need to delay the transfer of this determination from the judiciary to the indigent defense systems until standards are issued, personnel are trained and an appeal process is established.

While there are many factors the MIDC Act and HB 5985 identify which are to be used in determining partial indigency, there is nothing that creates a firm standard or bright line test so that an individual who is deemed partially indigent in one County will be deemed partially indigent in another County. The same is true for the determination of indigency. Further, partially indigent defendants should pay the same amount of attorney fees from County to County (at least in the same geographic area). A person earning \$45,000 per year in Macomb County should pay the same amount in attorney fees as the person earning \$45,000 per year in Wayne County. There should not be 120 different standards.

In Section 11 (D) and (E) of HB 5985, the MIDC is directed to set standards for determining partial indigency. This should be expanded to include standards for indigency as well. The courts have always made the decision whether a defendant was indigent (and now partially indigent). However, under the MIDC the determination of indigency and partial indigency has been shifted to the indigent defense system, which at this point, is without any standards or a bright line test and therefore is ill equipped to make such determinations.

Moving the determination of indigency and partial indigency to the courts in the original version of the HB 5985 was a positive change to the MIDC Act. This function is best performed by the judiciary which is experienced and very familiar with making such decisions and from which an appeal can be taken if someone is denied counsel. Further, for the indigent defense system to determine indigency and partial indigency will complicate the initial step of the criminal/judicial process which is the arraignment. There is not the staff nor the time to make these determinations at or before arraignment by the indigent defense system. This is particularly true with many large district court systems who arraign 30-90 (or more) individuals a day.

Further in this regard, the indigent defense system must have somebody present to make the decision which for most systems is lacking at this point. It obviously cannot be the indigent defense attorney. It is cost prohibitive to have an attorney present in all courthouses to make this decision. In large systems where there are 30 and 90 arraignments per day an attorney would need to be present for at least one-half day every day and available by phone for the remainder of the day. Accordingly, either a clerk or an administrative supervisor must make the preliminary decision which now includes a decision whether the defendant is partially indigent. Accordingly, at a minimum, administrative personnel will need standards from which they can make these determinations. Missing entirely is an appeal process, either within the indigent defense system and/or to the judiciary, in the event of an adverse decision.

Finally, and more important, the implementation of this part of the Act needs to be delayed until 180 days after the MIDC issues standards for determining indigency and partial indigency. This will also provide time for the legislature or the MIDC to create an appeal process and the funding units to train clerks/supervisors or others to make this decision pursuant to established standards.

New MIDC Commissioners and Qualifications of Commissioners

Section 7 (1) (K)- (M) (pages 6-8)

Section 7 (3) (page 8)

As originally proposed HB 5985 added three additional MIDC Commissioners, one more appointee for MAC (total of two) and one for MML and one for the Senate Budget Office. In passing the HB 5985 the House changed the additional appointee from MAC (county funding units) to the Michigan Townships Association. Counties are the funding units for all circuit courts and when the number for district courts for whom counties are the funding units is added to the circuit courts the role of counties is significant and deserves far greater representation than one member of the MIDC.

In this regard, district courts of the first and second class are funded and administered by counties (not townships). A review of MCLA 600.8101 and specifically sections 8105 through 8163 reveals that counties are the named funding unit for approximately 48 first class district courts and second class district courts. Cities are the named funding units for approximately 34 third class district courts. Contrary to this, Townships are the funding units for approximately 9 third class district courts (this includes district courts where a township(s) are joint funding units with cities, e.g. 48th District Court). By giving one appointee to the Michigan Township Association, HB 5985 is giving undue (extreme) weight to Townships whose role as funding units is very small. At a minimum, counties should have two seats on the Commission and the Townships and MML should alternate between one seat.

Further and importantly, not only should counties have at least two members, one of those members should be from a Funding Unit with a population over one half million. These are the Funding Units where most of the funds are being expended and where most of the significant operational problems exist.

The qualifications for MIDC commissioners should be amended to provide that individuals with significant experience in the administration of a Circuit or District Court system, jail administration, or governmental administration are also qualified. The MIDC lacks administrative/operational expertise, especially involving large systems.

Local Share

Section 3 (1) (page 3)

Section 13(7) (page 20, lines 4 and 7)

Section 13 (8) (page 20)

Section 13 (6) (page 19)

Under HB 5985 local share now contains an escalator of 3% or the cost of living whichever is less. First, the new definition of local share with a consumer price index escalator raises Headlee issues. Second, the MIDC Act was passed with the understanding that the cost to local units of government would remain the same. Hence, the formula for local share (i.e. average cost of indigent defense for fiscal years 2010-2012).

It is difficult to ascertain what the Bill in Section 13 (6) page 19 means by an MIDC recommendation to the Governor that must include "a recommendation regarding the appropriate level of local share, expressed both in total dollars and as a percentage of total cost of compliance for each indigent criminal defense system". Local Share is already defined as fiscal years 2010-2012. What exactly will be determined by the MIDC regarding local share with this recommendation? The only changes the amendments make is to include an escalator (COLA) for the cost of living or 3%.

Retention of Reimbursements from Partially Indigent

Section 13 (7)

Section 17 (2) (page 26)

Under the current statute the funding units keep all reimbursement from partially indigent defendants. This should stay the same. HB 5985 now provides that the State will take 20% of the gross revenue collected and leave the indigent defense system with the remaining funds after the cost of collection. In other words, the State will be receiving 20% of the gross funds collected and the system will only retain the remainder minus the cost of collection. The current system needs to be maintained.

In addition, HB 5985 now specifies how these funds must be spent whereas previously these funds were used as determined by the local courts and the funding units. Local units should be able to make this determination. Again, the current system should be maintained.

Delay in Implementation of a Standard

Section 13 (7) (lines 9-15)

Section 13 (8) (page 20)

This subsection grants the legislature the ability to delay funding a standard. This amendment is warranted.

One of the Standards should be delayed. That is Standard 4 (Counsel at First Appearance). Individual Funding Units are expending large amounts of money on this Standard. For example, when you add construction costs to the cost of attorneys and additional Corrections Officers to handle Standard 4, it will total approximately \$2M in increased costs for this function for the first year for Oakland County alone. The value to be gained is minimal. Virtually the only function of the arraignment only attorney is to argue bond. When you eliminate the number of defendants for which there is no bond and the number of defendants who can post bond, very few defendants will be served. For those for whom a bond is imposed that they cannot post, the legislature can amend bond provisions of the Michigan Criminal Code allowing for an expedited hearing process requiring a hearing with appointed counsel within 24 hours (the hearing can be held that day or the next day).

If there is a fear that defendants will plead guilty at arraignment without an attorney and without appreciating the consequences of their plea, a rule can be imposed prohibiting all guilty pleas at arraignment. If the defendant still wants to plead guilty at arraignment, an attorney can be provided later that day or within 24 hours.

Standard 4 imposes a large cost, without a corresponding benefit, and any difficulties can be remedied as set forth above.

Exceed 180 Days for Compliance

Section 13 (11) (pages 21)

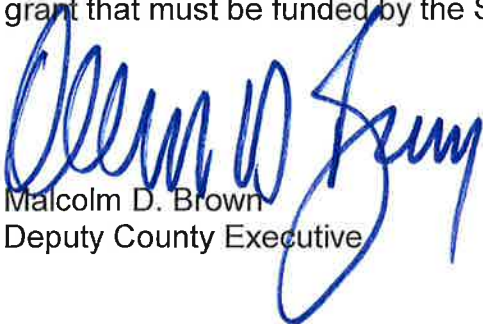
This amendment is warranted and should be enacted. Some funding units must undertake renovations that cannot be completed in six months, particularly in jail and court areas which must remain operationally functional during renovation.

Costs Reasonably and Directly Related to Indigent Defense Function

Section 13 (4) (page 18)

When the legislature passed the MIDC Act some five years ago, the commitment was that local funding units would not incur any additional costs, they would only be required to pay what they previously paid (average costs from 2010-2012). All other costs would be paid by the State.

Certain aspects of the MIDC Act have and will cause funding units to expend other monies that would not have to be paid otherwise. These expenses and costs should not be rejected simply because they are not incurred by the defense side of the table. If the incursion of the costs were caused by implementation of an MIDC standard, they should be a recoverable cost of the MIDC grant that must be funded by the State.



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Cc: Jerry Poisson